

State of California
Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, California 94105

INITIAL STATEMENT OF REASONS

**File No. RH-396
February 23, 2001**

RENTAL CAR AGENT LICENSING

INTRODUCTION

California Insurance Commissioner Harry W. Low proposes the adoption of Title 10, Chapter 5, Subchapter 1, Article 3.5, Sections 2130-2130.8, California of Regulations, regarding rental car agent licensing.

The purpose of these regulations is to implement, interpret, and make specific the provisions of California Insurance Code, Division 1, Part 2, Chapter 5, Article 16.6, Sections 1758.8 through 1758.891.

California Insurance Code Sections 1758.8-1758.891 require licensure by the Commissioner for the sale of insurance by rental car companies after January 1, 2001. In addition, the statutes establish requirements for treatment of funds received from renters; that information, forms, policies, and training materials be filed with the Commissioner; that conditions be met by employees who offer insurance products as endorsees under the rental car agent license; that endorsees be trained and supervised; that five types of insurance may be sold by rental car companies; that disclosures be made to renters; and that licensees not exceed certain limitations. Finally, the statutes set forth penalties for violation of Sections 1758.8-1758.891.

The same statutes also require the Commissioner to establish procedures for accepting and processing applications for rental car agent licensure, to determine appropriate license and renewal fees, to devise forms consistent with statutory requirements, and generally to implement and administer the article commencing with Section 1758.8. Assembly Bill No. 62, Chapter 618 (1999-2000 session), Section 2, requires the Commissioner to adopt regulations, on an emergency basis, to implement California Insurance Code Sections 1758.8-1758.891. Regulations were adopted on an emergency basis on December 4, 2000, effective December 6, 2000. The presently proposed regulations are intended to comply with the statutory mandate on a permanent basis.

The specific purpose of each regulation and the rationale for the determination that each regulation is reasonably necessary to carry out the purpose for which it is proposed are set forth below.

Section 2130. Authority

Authority for promulgation of these regulations resides in a portion of Assembly Bill No. 62 that is not published in the Insurance Code. Thus an important component of the rental car agent regulatory scheme is not readily available to the public and, in particular, to prospective licensees and renters. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to make the information readily available by placing it in the California Code of Regulations.

In addition, prospective licensees and prospective renters might not know from the statutes alone the date upon which the regulations become operative and, as a result, might fail to comply with them. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to clearly indicate that date.

Section 2130.1. Definitions.

The terms “authorized insurer,” “franchise” and its derivatives, and “organization,” as employed in CIC §§1758.8-1758.891 and in the regulations, may be unclear to prospective licensees without recourse to a dictionary or obscure legal research. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to define these terms in order to assist the reader in understanding the statutes and regulations.

Section 2130.2. Applications.

It is unclear from CIC §§1758.8-1758.891 what a natural person or organization, operating alone or as a franchisee, must do to have approved a true or fictitious name, and to be appropriately licensed. Moreover, a prospective licensee who is not an attorney may not understand that the “certification” required by CIC §§1758.8-1758.891 is an oath under penalty of perjury. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to clarify those statutory provisions.

Section 2130.3. Fees and Costs.

Pursuant to CIC §1758.81(a)(3), the Commissioner is to determine an amount of the license application fee that will be adequate for the administration of CIC §§1758.8-1758.891. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to establish that amount. The application fee has been computed in the following manner: the sum of the fiscal year expenditure authority for personnel services, operating expenses and equipment, divided by the estimated number of rental car companies operating in California per the Car and Truck Renting and Leasing Association of California (CATRALA).

The fee for fiscal year 2000-01 was computed as follows:

(a) Expenditure authority for rental car insurance limited licenses = \$65,000 for personnel services + \$105,000 for operating expenses and equipment = \$170,000.

Expenditure authority for personnel services consists of one Staff Services Analyst position to review and approve the training materials and one Program Technician II to process the license applications.

(b) Estimated number of car rental companies = 500.

(c) \$170,000 B 500 = \$340.

CIC § 1758.81(c) states that the licensee must pay “costs associated with” enforcement or investigation by the Department, but does not clarify that these costs are over and above the application fee. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to explain that costs of enforcement or investigation are to be separately charged to and paid by the licensee to the Department of Insurance.

Section 2130.4. Disclosure.

The prospective renter often is confused as to whether the purchase of insurance is necessary or desirable when renting a car, what the insurance being offered by the rental car company is exactly, and who is underwriting the insurance. The prospective renter is entitled to make informed decisions by having the following information: the approved true or fictitious name of the licensee’s business, the insurer’s name, a copy of the rental agreement, and a clear and conspicuous disclosure. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to set forth conditions to be met in the statutorily required disclosures to renters and prospective renters.

Section 2130.5. Training.

The Commissioner has an interest in reviewing training materials for completeness and compliance with the Insurance Code so that (1) endorsees are trained properly in transacting insurance, and (2) consumers are receiving the information intended by the Legislature to be provided. That training must include information specific to the different types of insurance described in CIC §1758.85. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to require separate sets of training materials for different insurance products sold and to set forth the frequency with which endorsees must undergo training.

The Commissioner does not have a need to review cumulative sets of training materials, since agency space and personnel resources are limited. The section therefore creates an exception to the training materials filing requirement. In the event that materials are filed by the insurer, whose materials are being used by the applicant, the Commissioner does not need to see them twice. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to obviate cumulative filings.

Section 2130.6. Records.

The statutes do not state that the producer records provisions of the Insurance Code and Code of Regulations apply to rental car agents. The Commissioner has authority to examine the records of producers, but there must be standards for records maintenance and production for the

Commissioner's review, in order that the Commissioner may effectively enforce the Insurance Code. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to provide those standards.

Existing Section 2130.6(c) has been amended to additionally provide that records may be requested by the Commissioner in electronic and/or written format.

The subsection also includes a note that the e-mail and regular mailing addresses to which the records must be sent will be available from the Department of Insurance by phone, in writing, and on the Department's website.

Section 2130.7. Forms.

The rental car agent statutes require that several forms be devised by the Commissioner and filed by applicants and licensees. The Commissioner has devised 6 forms, one of which is 6 pages long, another of which is 5 pages long, and the rest 1 or 2 pages each. It would be cumbersome and otherwise impractical to publish the forms in the Code of Regulations, especially since they are more readily available to the affected public in other ways. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purposes: to set forth the form numbers and revision dates for the forms required to be filed with the Commissioner pursuant to CIC §§1758.81 and 1758.82, and to incorporate those forms by reference, noting their availability by request or on the Department's website, pursuant to 1 CCR §20(c)(2).

Existing Section 2130.7(f) has been amended to additionally require the list of authorized endorsees to be maintained in a format that can be transmitted to the Commissioner electronically and in hard copy or diskette, in commercial word-processing or spreadsheet form, however the Commissioner may request it, and to be updated to include new endorsees, with authorization start and stop dates, if requested.

The forms, attached herein and incorporated by reference, are as follows:

- (a) written application for licensure -- Form 441-9 (Rev 11/2000) for individuals and on Form 441-11 (Rev 11/2000) for organizations;
- (b) initial certification of authorized employees -- Form Lic. RCA 1 (Rev 11/2000);
- (c) annual certification of authorized employees -- Form Lic. RCA 2 (Rev 11/2000);
- (d) insurer certification -- Form Lic. RCA 3 (Rev 11/2000);
- (e) description of elements that must be contained in training materials submitted to the Commissioner -- Form Lic. RCA 4 (Rev 11/2000); and
- (f) list of authorized endorsees -- Form Lic. RCA 5 (Rev 11/2000).

Section 2130.8. Procedures.

Current administrative practices often result in unnecessary and burdensome delays in the process of obtaining licenses. The section sets forth timeframes in which the Commissioner must inform an applicant that the application is deficient and what is needed to complete it; to reach a decision whether to issue the license or deny the application, and so inform the applicant; and to establish the median, minimum, and maximum times for the agency's processing of a license application. This is the rationale for the determination that this regulation is reasonably necessary to carry out the following specific purpose: to set forth deadlines and procedures designed to expedite the process of obtaining licenses, and thereby to ensure the timely and efficient handling of license applications.

Because Article 16.6 (commencing with §1758.8) of the Insurance Code is new, the Department has no historical experience *specific to rental car agent licensing* on which to base the time periods required by Section 15376 of the Government Code. Therefore, the time periods set forth in this section have been based instead on the Department's experience in processing *other* types of producer licenses. In the future, the deadlines will be made more specific to the processing of rental car agent licenses.

In addition, the time periods set forth in this section are based on both the technological development of the Department's Producer Licensing Bureau over the past few years and the historical averages for license-processing during the years 1998 and 1999. The year 2000 was unusual in that the time periods required for license-processing were appreciably longer. This was due to (1) severe attrition of Producer Licensing Bureau personnel, (2) difficulty in recruiting new personnel, and (3) an increase in the number of licenses to be processed having exceeded by more than 15 percent the number processed during each of the two preceding years.

The time period set forth in 10 CCR §2130.8(a)(1) was determined based on the time it historically has taken for the license application package to make its way from the department's mailroom to its cashiering unit, then on to the Producer Licensing Bureau for review, including 3-5 days in cashiering, and any weekends and/or holidays that may have occurred during the stated time period, and the time necessary for a meaningful review for deficiencies.

The time period set forth in 10 CCR §2130.8(a)(2) also was determined based on the time it historically has taken for a completed license application package to make its way from the mailroom to the cashiering unit and then on to the Producer Licensing Bureau for review, including 3-5 days in cashiering and any weekends and/or holidays that may have occurred during the stated time period, and the actual processing of the application and issuance of the license, and the time necessary for a decisionmaking and issuance of the license.

The median, minimum and maximum time periods set forth in 10 CCR §2130.8(c) were determined based on license-processing time periods during the years 1998 and 1999 (see above).

MANDATE OF SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES, EQUIPMENT

The regulations mandate the use of computer technology in the maintenance and transmission of records on request of the Commissioner. The Department was assured, in pre-notice public discussions with the industry, that this technology is part of the standard operating procedures of the industry and that this mandate would not be burdensome to the industry. The imposition of performance standards was considered and rejected as an alternative.

ALTERNATIVES

The Department has determined that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.